

REFERENCE TITLE: **takings; public use; juries; fees**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SCR 1002

Introduced by
Senators Blendu, Bee, Burns, Martin; Flake, Gould, Gray, Harper,
Huppenthal, Verschoor; Representative Weiers JP

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II,
SECTION 17, CONSTITUTION OF ARIZONA; RELATING TO EMINENT DOMAIN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives concurring:

3 1. Article II, section 17, Constitution of Arizona, is proposed to be
4 amended as follows if approved by the voters and on proclamation of the
5 Governor:

6 17. Eminent domain; just compensation for private
7 property taken; public use determinations;
8 costs and fees

9 Section 17. A. Private property shall not be taken for
10 private use, except for private ways of necessity, and for
11 drains, flumes, ~~or~~ ditches, on or across the lands of others
12 for mining, agricultural, domestic, ~~or~~ sanitary purposes.

13 B. No private property shall be taken or damaged for
14 public or private use without just compensation having first
15 been made, paid into court for the owner, secured by bond as may
16 be fixed by the court, or paid into the state treasury for the
17 owner on such terms and conditions as the legislature may
18 provide, and no right of way shall be appropriated to the use of
19 any corporation other than municipal, until full compensation
20 therefore be first made in money, or ascertained and paid into
21 court for the owner, irrespective of any benefit from any
22 improvement proposed by such corporation, which compensation
23 shall be ascertained by a jury, unless a jury be waived as in
24 other civil cases in courts of record, in the manner prescribed
25 by law. Whenever an attempt is made to take private property
26 for a use alleged to be public, the question whether the
27 contemplated use be really public shall be a judicial question,
28 and determined as such without regard to any legislative
29 assertion that the use is public, **EXCEPT THAT ON REQUEST OF A**
30 **PRIVATE PROPERTY OWNER, A JURY SHALL DETERMINE WHETHER A TAKING**
31 **IS FOR A PUBLIC USE.**

32 2. The Secretary of State shall submit this proposition to the voters
33 at the next general election as provided by article XXI, Constitution of
34 Arizona.